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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C. 20554

In the Matter of )

Assessment and Collection )  
of Regulatory Fees for )  
Fiscal Year 1998 )

MD Docket No. 98-36

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**COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.**

Loral Space & Communications Ltd. ("Loral"), by its attorneys, hereby files comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup>

**I. Introduction**

Section 9(a) of the Communications Act permits the Commission to assess and collect regulatory fees to recover the costs associated with its "enforcement activities, policy and rulemaking activities, user information services, and international activities."<sup>2</sup> The NPRM institutes a proceeding to revise the Commission's Schedule of Regulatory Fees in order to collect the amount required by Congress for fiscal year 1998. In order to obtain the \$162,523,000 in regulatory fees required by Congress,<sup>3</sup> the Commission has proposed to increase various annual regulatory fees, including sharp increases for operational geostationary and non-geostationary

<sup>1</sup> In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998, Notice of Proposed Rulemaking (rel. March 25, 1998).

<sup>2</sup> 47 U.S.C. § 159(a)(1).

<sup>3</sup> NPRM at ¶ 2 (citing Public Law 105-119 and 47 U.S.C. § 159(a)(2)).

space stations and international bearer circuits.<sup>4</sup> The Commission has also again proposed to collect international bearer circuit fees from non-common carrier satellite operators.<sup>5</sup>

Loral opposes these proposals. The Commission's proposed fee increases for space stations and international bearer circuits bear no relation to the actual cost of regulating satellite operators and have not been justified on the record. Furthermore, the extension of the international bearer circuit fee to non-common carrier satellite operators violates the Communications Act.

The Commission should lower its regulatory fees for space stations and international bearer circuits (or provide specific cost justification for the proposed increases on the record) and exclude from its fee schedule international bearer circuits provided by non-common carrier satellite operators.

**II. The Proposed Increases for Space Stations and International Bearer Circuits Bear No Relation to the Actual Cost of Regulating Satellite Operators and Have Not Been Justified on the Record**

Section 9(b) of the Communications Act, as amended, requires that the regulatory fees imposed by the Commission upon Commission licensees be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities. . . ." <sup>6</sup> The fees proposed in the NPRM for space stations and international bearer circuits fail to satisfy this requirement.

The NPRM proposes to increase the annual fee for geostationary space stations from \$97,975 to \$119,000 per operational satellite. This is a 21% increase over last year's fee and

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4 NPRM Attachment H at ¶¶ 36, 38.

5 NPRM Attachment H at ¶ 38.

6 47 U.S.C. § 159(b)(1)(A).

results in a 69% increase over a two year period.<sup>7</sup> Similarly, the NPRM proposes to increase the annual fee for non-geostationary space stations from \$135,675 to \$164,800 per operational system. This is also a 21% increase over last year's fee and results in a 69% increase over a two year period.<sup>8</sup> The fee for international bearer circuits was also increased by 20% (from \$5 per circuit to \$6 per circuit), on top of a 20% increase in fees imposed in 1996 - - a 50% increase in only two years.<sup>9</sup>

These increases are unreasonable and unjustified. Once a satellite is authorized, the Commission engages in very little oversight of the licensee. The majority of Commission resources with respect to geostationary satellite operations is expended on satellite applications, for which an \$85,045 fee, per satellite, is currently required.<sup>10</sup> Any increase in the Commission's workload with respect to these applications should be included in the relevant application fees, not annual regulatory fees.<sup>11</sup>

The NPRM is deficient in that it provides no evidence that the proposed fee increases are concomitant with increases in the Commission's workload in regulating the applicable Commission licensees or are consistent with the Congressional-imposed costing methodology

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<sup>7</sup> Last year, the geostationary satellite fees were increased from \$70,575 to \$97,975. Assessment and Collection of Regulatory Fees for Fiscal Year 1997, Report and Order, 12 FCC Rcd 17161 (1997) at Attachments F and G.

<sup>8</sup> Last year, the non-geostationary satellite fees were increased from \$97,725 to \$135,675 per system. Id.

<sup>9</sup> Last year, the fees for international bearer circuits were increased from \$4 to \$5. Id.

<sup>10</sup> 47 C.F.R. § 1.1107.

<sup>11</sup> Application fees are to reflect the actual cost of processing applications and other filings. See In re Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order, 2 FCC Rcd 947 (1987).

used to derive such fees. Although the Act requires use of a specific costing methodology to determine applicable fees,<sup>12</sup> the NPRM does not disclose or explain how the methodology was utilized to create each applicable fee. Absent any substantive analysis of the costing methodology involved, the proposed fee increases result in fees that bear no relation to the benefits conferred on the paying licensees. As such, any such increases would be in contravention of the statute as well as arbitrary and capricious.<sup>13</sup>

### III. The Commission Should not Include Non-Common Carrier International Bearer Circuits in its Fee Schedule

The NPRM proposes to require non-common carrier satellite operators to pay regulatory fees for international bearer circuits.<sup>14</sup> This proposal contravenes the Communications Act and public policy.

Section 9 of the Communications Act provides that "carriers" are required to pay regulatory fees based on the number of international bearer circuits utilized that year.<sup>15</sup> The term "carrier" is specifically defined in the Communications Act as a "**common carrier**," or a "person engaged as a **common carrier** for hire. . . ."<sup>16</sup> Therefore, the Commission has authority to collect international bearer circuit fees only from common carriers. Given this, arguments that

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<sup>12</sup> 47 U.S.C. § 159(b)(1)(A).

<sup>13</sup> The lack of a direct nexus between the regulatory fees imposed and the benefits conferred render the fees outside the requirements of Section 9(b)(1)(A). This possibly makes the fees more of a tax than a regulatory fee. Cf. NCTA v. U.S., 415 U.S. 336 (1974).

<sup>14</sup> NPRM Attachment H at ¶ 38.

<sup>15</sup> 47 U.S.C. § 159(g).

<sup>16</sup> 47 U.S.C. § 153(10) (emphasis added).

common carrier and non-common carrier satellite operators are allegedly "functionally identical" or that some oversight of international bearer circuits is somehow required are legally irrelevant.<sup>17</sup>

The Commission's authority to amend the statutory fee schedule is expressly limited not only by Section 9(b)(1), governing appropriate costing procedures, but also by Section 9(b)(3) which allows the FCC to "add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law." In other words, the underlying regulatory treatment of a service must first change -- independent of Commission fee collection concerns -- in order to permit agency reclassification of services for the purpose of fee collection. Here, the Commission has attempted to alter the fee classification of non-common carrier international bearer circuits independent of any underlying regulatory reclassification that might have occurred in a rulemaking proceeding or by a change in the Communications Act. The courts have made clear that this is not permissible under the plain terms of Section 9. See Comsat Corp. v. FCC, 114 F.3d 223 (D.C. Cir. 1997) (reversing FCC's attempt to impose a signatory fee on Comsat where no rulemaking proceeding had been held to support the new fee category).

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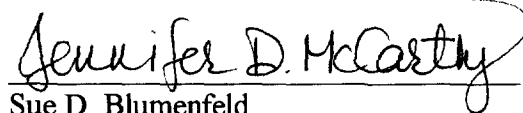
<sup>17</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 12 FCC Rcd 17161 (1997) at ¶ 67.

IV. Conclusion

For the reasons set forth above, Loral requests that the Commission reevaluate the proposed fee increases for space stations and international bearer circuits to lower the fee imposed in order to reflect the actual costs of regulating these services. Loral also requests that the Commission refrain including non-common carrier international bearer circuits in its fee schedule.

Respectfully submitted,  
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